

108TH CONGRESS
2D SESSION

H. R. 5410

To amend the Expedited Funds Availability Act to redress imbalances between the faster withdrawals permitted under the Check 21 Act and the slower rates for crediting deposits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2004

Mrs. MALONEY (for herself, Mr. JACKSON of Illinois, Mr. ENGEL, and Mr. MARKEY) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Expedited Funds Availability Act to redress imbalances between the faster withdrawals permitted under the Check 21 Act and the slower rates for crediting deposits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Checking
5 Account Fairness Act”.

1 **SEC. 2. ADJUSTMENT OF CHECK HOLD PERIODS RE-**
2 **QUIRED.**

3 (a) IN GENERAL.—Section 603(d) of the Expedited
4 Funds Availability Act (12 U.S.C. 4002(d)) is amended
5 by adding at the end the following new paragraph:

6 “(3) COORDINATION WITH CHECK CLEARING
7 FOR THE 21ST CENTURY ACT.—

8 “(A) IN GENERAL.—The Board shall pre-
9 scribe regulations under paragraph (1)—

10 “(i) to reduce the time periods under
11 subsections (a), (b), or (e), in accordance
12 with the requirements of paragraph (1), to
13 take into account the time within which
14 any receiving institution can reasonably ex-
15 pect to learn of the nonpayment of most
16 items for each category of checks under
17 the Checking Clearing for the 21st Cen-
18 tury Act or the regulations implementing
19 such Act; or

20 “(ii) to eliminate distinctions between
21 the schedules established under subsections
22 (a), (b), or (e) if the Board finds that such
23 distinctions no longer have any significance
24 for any category of checks under the
25 Checking Clearing for the 21st Century

1 Act or the regulations implementing such
2 Act.

3 “(B) PARAGRAPH (2) ADJUSTMENTS.—The
4 Board may, by regulation, eliminate the exten-
5 sion provided under paragraph (2) for deposits
6 of any category of checks if the Board finds
7 that the extension has no practical necessity
8 under the Checking Clearing for the 21st Cen-
9 tury Act or the regulations implementing such
10 Act.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENT.—
12 Paragraph (2) of section 603(d) of the Expedited Funds
13 Availability Act (12 U.S.C. 4002(d)) is amended by insert-
14 ing “(other than regulations prescribed under paragraph
15 (3)(B))” after “any other provision of law”.

16 (c) REGULATIONS.—The Board shall prescribe the
17 regulations required under the amendment made by sub-
18 section (a) in final form before the end of the 6-month
19 period beginning on the date of the enactment of this Act.

20 **SEC. 3. AMENDMENTS RELATING TO CHECKING ACCOUNT**
21 **CONSUMERS.**

22 (a) DEPOSITS AT PROPRIETARY ATMS.—Section
23 603(a)(2) of the Expedited Funds Availability Act (12
24 U.S.C. 4002(a)(2)) is amended—

1 (1) in subparagraphs (B)(ii) and (C)(ii), by in-
 2 serting “or is deposited at a proprietary ATM” be-
 3 fore the semicolon at the end of each such subpara-
 4 graph; and

5 (2) in subparagraph (E), by inserting “, or a
 6 check deposited at a proprietary ATM,” after “de-
 7 posited in a branch of a depository institution”.

8 (b) LIMITATION ON CERTAIN FEES DURING CHECK
 9 HOLD PERIOD.—Section 607 of the Expedited Funds
 10 Availability Act (12 U.S.C. 4006) is amended by adding
 11 at the end the following new subsection:

12 “(f) LIMITATION ON CERTAIN FEES DURING CHECK
 13 HOLD PERIOD.—If a receiving depository institution has
 14 received a provisional or final settlement with respect to
 15 a check deposited in an account at the depository institu-
 16 tion and such depository institution has not yet made the
 17 proceeds of the deposit available to the accountholder, the
 18 receiving depository institution may not assess any fee for
 19 an overdraft, or any fee associated with the payment of
 20 an overdraft, that would not have occurred if such funds
 21 so deposited were available.”.

22 (c) CREDITS REQUIRED TO BE POSTED BEFORE
 23 DEBITS.—Section 607 of the Expedited Funds Avail-
 24 ability Act (12 U.S.C. 4006) is amended by inserting after

1 subsection (f) (as added by subsection (b) of this section)
2 the following new subsection:

3 “(g) ORDER OF POSTING.—In the process of posting
4 credits and debits against a checking account used pri-
5 marily for personal, family, or household purposes after
6 the close of any business day, the receiving depository in-
7 stitution shall credit all deposits to the account before deb-
8 iting any check drawn on the account and presented to
9 the depository institution for payment.”.

10 (d) SATURDAYS MAY BE TREATED AS BUSINESS
11 DAYS.—Section 602(3) of the Expedited Funds Avail-
12 ability Act (12 U.S.C. 4001(3)) is amended by adding at
13 the end the following new sentence: “For purposes of this
14 title, however, Saturday shall be treated as a business day
15 in the calculation of any period within which funds depos-
16 ited in an account at a receiving depository institution are
17 required be made available under this title, if with respect
18 to checks received by the depository institution for which
19 it is the originating institution, the depository institution
20 debits accounts on Saturdays for such checks.”.

21 (e) REDUCTION IN CHECK HOLDS FOR NONLOCAL
22 CHECK DEPOSITS.—Section 603(b)(2) of the Expedited
23 Funds Availability Act (12 U.S.C. 4002(b)(2)) is amended
24 by striking “not more than 4 business days shall intervene

1 between” and inserting “funds shall be made available on
2 the 2nd business day after”.

3 (f) ADJUSTMENT FOR INFLATION FOR LARGE CHECK
4 LIMITATION.—

5 (1) IN GENERAL.—Section 604(a)(3) of the Ex-
6 pedited Funds Availability Act (12 U.S.C.
7 4003(a)(3)) is amended by striking “\$5,000” each
8 place such term appears and inserting “\$7,500”.

9 (2) CLERICAL AMENDMENT.—The paragraph
10 heading for section 604(a)(3) of the Expedited
11 Funds Availability Act is amended by striking
12 “\$5,000” and inserting “\$7,500” .

13 (g) ADJUSTMENT FOR SMALL DEPOSIT AVAIL-
14 ABILITY.—Section 603(a)(2)(D) of of the Expedited
15 Funds Availability Act (12 U.S.C. 4002(a)(2)(D)) is
16 amended by striking “\$100” and inserting “\$500”.

17 (h) FEES FOR SERVICES NOT REQUESTED.—Section
18 607 of the Expedited Funds Availability Act (12 U.S.C.
19 4006) is amended by inserting after subsection (g) (as
20 added by subsection (c) of this section) the following new
21 subsection:

22 “(h) FEES FOR SERVICES NOT REQUESTED.—No de-
23 pository institution may impose any fee for paying any
24 check drawn on an account in spite of a lack of sufficient
25 funds in the account to pay such check or any similar ac-

1 tivity (commonly referred to as ‘bounce protection’) unless
 2 the accountholder has affirmatively requested such serv-
 3 ice.”.

4 (i) CLARIFICATION OF PREEMPTION.—Section 608 of
 5 the Expedited Funds Availability Act (12 U.S.C. 4007)
 6 is amended—

7 (1) in subsection (b)—

8 (A) by inserting “or (c)” after “subsection
 9 (a)”; and

10 (B) by inserting “, but only to the extent
 11 of any such inconsistency” before the period at
 12 the end; and

13 (2) by adding at the end the following new sub-
 14 section:

15 “(c) CLARIFICATION OF INCONSISTENCY.—A State
 16 law shall not be construed as inconsistent with this title,
 17 or any regulation prescribed under this title, if the protec-
 18 tion such law affords the consumer by such law is greater
 19 than the protection afforded by this title. For purposes
 20 of determining congressional intent with respect to pre-
 21 emption, the purpose of this title shall be construed to be
 22 the establishment of a minimum basis of protection for
 23 the consumer and not the creation of a uniform national
 24 rule.”.

1 **SEC. 4. RECREDIT FOR ALL CONSUMERS UNLESS SUB-**
2 **STITUTE CHECKS ARE PROVIDED WITHOUT**
3 **COST UPON REQUEST.**

4 Section 7(b) of the Checking for the 21st Century
5 Act (12 U.S.C. 5006(b)) is amended by adding at the end
6 the following new paragraph:

7 “(3) FEES FOR SUBSTITUTE CHECKS.—If any
8 bank that holds the account of a consumer imposes
9 any fee for producing a copy of a substitute check
10 for such consumer with respect to such account, the
11 expedited recredit process established under this sec-
12 tion shall be available for all charges against any
13 such account without regard to whether a substitute
14 check was involved or not.”.

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